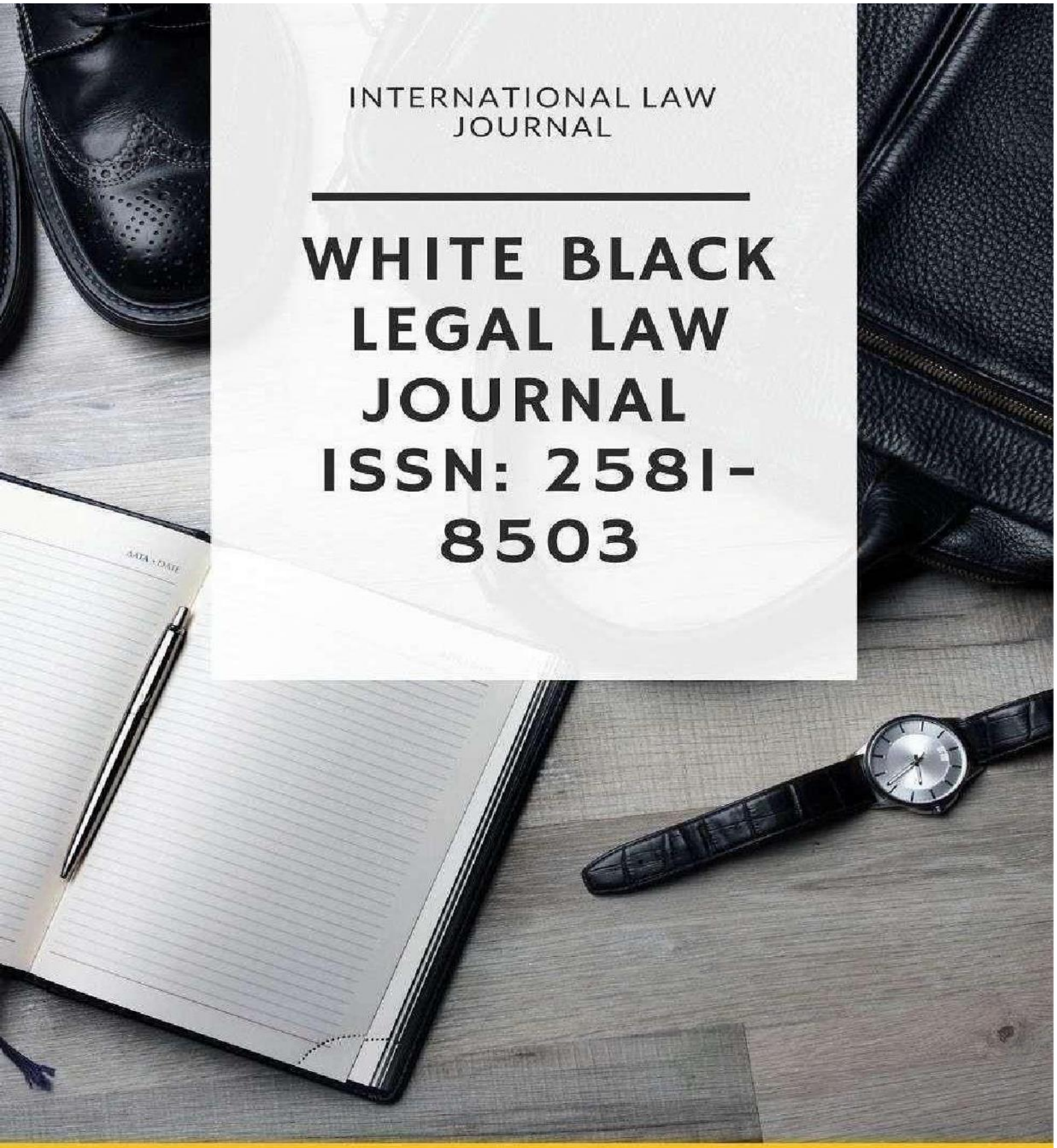

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LEGALITY OF REQUESTING FAMILY AUTHORIZATION IN EMERGENCIES AND DUTY OF NOT TRANSMITTING DANGERS DISCUSSED IN CRITICAL CARE INFORMED CONSENT

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Abstract

Informed consent is a cornerstone of medical law and ethics, especially in critical care situations where patients are usually unconscious or unable to make an informed decision. In emergency situations physicians often depend on implied consent or approval of relatives for provision of urgent lifesaving intervention. Indian law recognises the validity of family consent where a delay in treatment puts the life of the patient at risk. However, in emergencies, doctors and nurses are required by law and ethics to discuss major risks, possible complications, alternatives and the results of treatment if possible. Failure to communicate significant risks appropriately or obtaining only vague and general consent may be considered medical negligence and an infringement of patient autonomy. Judicial pronouncements like Samira Kohli v. Dr. Prabha Manchanda, Parmanand Katara v. Union of India and Paschim Banga Khet Mazdoor Samity v. State of West Bengal have made a profound impact on the legal structure of emergency medical care and informed consent in India. This essay examines the issue of the legitimacy of familial consent in critical care emergencies, the obligation of physicians to reveal risks, the courts' attitude toward non-disclosure of hazards, and the shifting balance between patient autonomy and the exigencies of emergency medical care.

Keywords: *care, informed consent, authorization, emergency, negligence, risks, patient, law, liability*

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I. Introduction

Critical care medicine is the branch of medicine that deals with patients who are critically ill or seriously injured and require immediate attention. Patients in Intensive Care Units (ICUs) who are unconscious, medicated, dependent on ventilators, or cognitively impaired cannot make independent decisions regarding their care. In most cases the law requires the doctor to obtain informed consent from the patient before any medical procedure is performed. Emergency situations pose practical and legal concerns as delays in treatment can lead to death or permanent injury. Therefore, there are exceptions within the judicial systems and medical legislation which allow doctors to treat patients by means of implied permission or authorization of the relatives.

The constitutional concept of personal liberty as contained in Article 21 of the Constitution of India is the basis for the concept of informed consent. Everyone has the right to bodily autonomy and to make the choice to give or withhold consent for medical treatment. A consent is considered "informed" when the patient is provided with complete and comprehensible information on the nature of the treatment, its possible dangers, the alternatives available, its expected benefits and its probable outcomes. Signing hospital documents does not in itself constitute legal consent unless the patient or his relatives understand what the treatment means.

Meaning and Importance of Informed Consent

Informed consent is a basic tenet of medical law and ethics, acknowledging every patient's right to determine what happens to his or her own body and medical treatment. It means that a patient gives his consent to a medical procedure only after being provided with complete and comprehensible information on the nature of the disease, the proposed treatment, the possible risks, the expected benefits, the alternatives available and the consequences of refusing treatment. Consent not given with sufficient information is not legally valid. The concept is based on the principle of personal autonomy and human dignity protected under Article 21 of the Constitution of India.

In medicine, informed consent is a mechanism to encourage transparency and trust between physicians and patients. It guarantees that patients have a say in decisions about their healthcare rather than being passive recipients of treatment. In critical care settings, informed consent is more important since medical interventions are generally accompanied by higher risks, emergency interventions, and life-support measures. Even if treatment is urgent, doctors are supposed to tell the patient or family about the biggest risks and get consent from them when

they can.

The Supreme Court in Samira Kohli v. Dr. Prabha Manchanda held that consent is valid only when it is voluntary and based on sufficient information. The Court highlighted that for consent to be valid, patients must know the nature and purpose of the treatment. Mere signing of a printed consent form does not amount to informed consent unless the patient understands what they are consenting to.

Basic Principles of Informed Consent

1. **Disclosure of Information:** The doctor has a duty to disclose all material facts relating to the treatment. This includes: type of illness, what is the treatment for, risks/complications, anticipated benefits, alternative therapies, and Effect of rejection. Information should be given in an open and honest way, so that the patient can make an informed choice.
2. **Competence or Capacity** – The patient giving consent must be of sound mind to understand the information provided. The permission must be valid. No person who is unconscious, mentally unsound, drunk or a minor can give a valid permission. In such cases, permission can be obtained from guardians or family members.
3. **Consent given freely:** Consent must be given freely, without pressure, coercion, fraud or undue influence Consent obtained by fear or by misinformation is not valid.
4. **Information Knowledge** The patient must have a genuine comprehension of the treatment's nature and effects. Doctors should explain medical jargon to the patient or relatives in layman's language.
5. **Consent/Authorization** There should be a clear statement of consent by the patient for the Doctor to proceed with the therapy/surgery.

Critical Care Situations and Emergency Consent

Critical care situations involve serious medical conditions where a patient's life is in immediate danger and urgent medical intervention becomes necessary to prevent death or permanent disability. Patients admitted to Intensive Care Units (ICUs) are often unconscious, sedated, ventilator-dependent, or mentally incapable of understanding and consenting to treatment. In such situations, obtaining formal informed consent from the patient may not be possible. Therefore, the law recognizes the doctrine of implied consent, under which it is presumed that

[2] Indian Journal of Anaesthesia, "Consent and the Indian Medical Practitioner," Vol. 59, Issue 11 (2015).

a reasonable person would consent to life-saving treatment if capable of making a decision.[2]The main objective in emergency medical care is preservation of human life, and doctors are legally permitted to provide immediate treatment without waiting for procedural formalities when delay may endanger the patient's survival.[3]

Emergency medical situations such as cardiac arrest, severe trauma, stroke, brain hemorrhage, respiratory failure, septic shock, poisoning, or major accidents require immediate action by healthcare professionals. Indian courts have repeatedly emphasized that the duty of doctors to save life takes priority over legal technicalities. In Parmanand Katara v. Union of India, the Supreme Court held that every doctor, whether in a government or private hospital, has a professional obligation to extend emergency medical assistance to preserve life without waiting for legal procedures.[4] Similarly, in Paschim Banga Khet Mazdoor Samity v. State of West Bengal, the Court recognized timely emergency medical treatment as an essential component of the right to life guaranteed under Article 21 of the Constitution of India.[5]

Although emergency circumstances may justify treatment without the patient's direct consent, doctors generally attempt to obtain authorization from close relatives or legal guardians whenever possible. Family authorization, also known as surrogate consent, is commonly obtained for emergency surgeries, ventilator support, blood transfusions, dialysis, and other high-risk ICU procedures.[6] Such consent is legally recognized because family members are presumed to act in the best interests of the patient. However, emergency consent does not give unlimited authority to doctors. Medical practitioners are expected to ensure that any procedure performed is medically necessary and directly connected to saving life or preventing serious harm.[7] Courts have clarified that unnecessary or unrelated procedures cannot be justified merely on the basis of blanket or generalized consent forms.

Critical care emergencies also raise ethical and legal challenges because doctors must balance the urgency of treatment with the patient's right to autonomy and information. Even during emergencies, healthcare professionals are expected to disclose major risks, prognosis, possible complications, and treatment alternatives to family members whenever circumstances

[3] J. K. Mason & G. T. Laurie, *Mason and McCall Smith's Law and Medical Ethics* (Oxford University Press, 9th ed., 2013).
[4] Parmanand Katara v. Union of India, AIR 1989 SC 2039.
[5] Paschim Banga Khet Mazdoor Samity v. State of West Bengal, (1996) 4 SCC 37.
[6] Current Medicine Research and Practice, "Informed Consent: Ethical Doctrine and a Legal Obligation," Vol. 13 (2023).
[7] Samira Kohli v. Dr. Prabha Manchanda, (2008) 2 SCC 1.

reasonably permit.[8] Proper documentation of emergency decisions, counselling provided to relatives, and reasons for immediate intervention are important safeguards against allegations of negligence or unauthorized treatment. Therefore, the legal framework governing emergency consent seeks to maintain a balance between rapid life-saving medical action and the protection of patient dignity and rights.[9]

II. Legality of Family Authorization During Emergencies

In emergency and critical care situations, patients are frequently unconscious, sedated, or otherwise incapable of making informed medical decisions. In such circumstances, doctors often seek authorization from close family members or legal guardians before proceeding with major medical interventions. This form of substitute decision-making is commonly known as surrogate consent or family authorization. Indian law recognizes the legality of family authorization during emergencies because immediate medical treatment is often essential to preserve life or prevent serious and irreversible harm.[10] The legal principle behind surrogate consent is based on the assumption that family members act in the best interests of the patient when the patient is unable to express their own wishes.

Family authorization is especially important in Intensive Care Units (ICUs), where urgent decisions regarding ventilator support, emergency surgery, dialysis, blood transfusions, organ support systems, or resuscitation measures may need to be taken within a very short period of time. In practice, hospitals usually obtain written consent from the patient's spouse, parents, adult children, or nearest relatives before conducting high-risk procedures.[11] Courts in India have accepted this practice as legally valid provided the treatment is necessary, reasonable, and directed toward saving the patient's life. The judiciary has also recognized that insisting on formal patient consent during life-threatening emergencies may lead to dangerous delays in treatment and may violate the constitutional obligation to protect life under Article 21.[12]

The Supreme Court in Parmanand Katara v. Union of India emphasized that preservation of human life is of paramount importance and that doctors have a professional duty to provide immediate medical assistance without waiting for legal formalities.[13] Similarly, in Paschim

[8]Canterbury v. Spence, 464 F.2d 772 (1972).
[9] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.
[10] R.K. Bangia, *Law of Torts* (Allahabad Law Agency, 27th ed., 2021).
[11] Indian Council of Medical Research, *National Ethical Guidelines for Biomedical and Health Research Involving Human Participants* (2017).
[12] M.P. Jain, *Indian Constitutional Law* (LexisNexis, 8th ed., 2018).
[13] Parmanand Katara v. Union of India, AIR 1989 SC 2039.

Banga Khet Mazdoor Samity v. State of West Bengal, the Court held that timely medical treatment is an integral part of the fundamental right to life guaranteed under Article 21 of the Constitution.[14] These decisions indirectly support the legality of family authorization in emergency healthcare because they prioritize urgent treatment over procedural technicalities.

However, the authority of family members is not unlimited. Doctors cannot rely on generalized or vague consent to perform unnecessary or unrelated procedures. The Supreme Court in Samira Kohli v. Dr. Prabha Manchanda clarified that consent must ordinarily be specific and informed.[15] The Court held that consent for one procedure does not automatically authorize another substantially different operation unless the additional procedure becomes immediately necessary to save life or preserve the patient's health. Therefore, even when family authorization is obtained, doctors must ensure that the treatment remains within the scope of medical necessity and emergency care.

Family authorization also carries ethical significance because relatives are often required to make difficult decisions under emotional stress and limited medical understanding. Doctors are therefore expected to communicate honestly with family members regarding the patient's condition, prognosis, risks, and possible outcomes before obtaining consent.[16] Proper documentation of discussions with relatives, consent forms, and emergency circumstances is essential to avoid future allegations of negligence or unauthorized treatment. Consequently, the legal framework relating to family authorization attempts to balance rapid emergency intervention with respect for patient autonomy, transparency, and accountability in healthcare practice.[17]

Duty to Disclose Risks and Dangers

The duty to disclose risks and dangers is one of the most important components of informed consent in medical law. It requires doctors to provide patients or their family members with adequate information regarding the nature of the proposed treatment, possible complications, expected benefits, available alternatives, and the consequences of refusing treatment. The principle is based on the idea that a patient has the legal and moral right to make an informed decision about medical care affecting their body and life.[18] Without proper disclosure, consent cannot be regarded as truly informed, and medical treatment may become legally questionable.

[14]Paschim Banga Khet Mazdoor Samity v. State of West Bengal, (1996) 4 SCC 37.
[15] Samira Kohli v. Dr. Prabha Manchanda, (2008) 2 SCC 1.
[16] Beauchamp & Childress, *Principles of Biomedical Ethics* (Oxford University Press, 7th ed., 2013).
[17] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.
[18] P.S.A. Pillai, *Law and Medicine* (Eastern Book Company, 4th ed., 2019).

In critical care and emergency medicine, disclosure of risks becomes especially significant because the procedures involved are often invasive and high-risk. Treatments such as ventilator support, emergency surgery, organ support therapy, blood transfusions, dialysis, or administration of powerful drugs may involve serious complications including infection, organ failure, disability, neurological damage, or even death.[19] Doctors are therefore expected to communicate substantial and material risks to the patient or, where the patient is incapable, to close family members or legal guardians. The explanation should be honest, understandable, and sufficient to enable the patient or relatives to make a rational decision regarding treatment.

The Supreme Court in Samira Kohli v. Dr. Prabha Manchanda clearly stated that informed consent requires disclosure of adequate information about the nature and purpose of treatment, benefits, alternatives, and significant risks involved.[20] The Court emphasized that patients must be given an opportunity to evaluate the advantages and dangers of the proposed medical procedure before agreeing to it. Mere signing of a printed consent form without understanding the associated risks does not amount to valid informed consent.[21]

The duty to disclose risks is closely connected with the concept of "material risk." A material risk is one that a reasonable patient would consider important while deciding whether or not to undergo treatment.[22] Examples include the possibility of paralysis, infertility, permanent disability, loss of vision, severe infection, brain injury, or death. Failure to communicate such risks may amount to medical negligence if the patient suffers injury and proves that proper disclosure could have influenced the decision-making process.[23] Courts have increasingly recognized that withholding important information violates patient autonomy and undermines trust in the doctor–patient relationship.

However, the law does not require doctors to disclose every remote or extremely rare complication that may unnecessarily frighten or confuse patients.[24] Disclosure is judged according to the circumstances of each case, the seriousness of the risk, and the urgency of treatment. In emergency situations where immediate intervention is necessary to save life, doctors may not have sufficient time to provide detailed explanations. Even then, they are expected to disclose major risks and obtain family authorization whenever reasonably possible.[25]

[19] S.K. Joshi, *Medical Negligence and Consumer Protection Law* (Universal Law Publishing, 2016).
[20] Ibid.
[21] Ratanlal & Dhirajlal, *The Law of Torts* (LexisNexis, 28th ed., 2016).
[22] World Medical Association, *Declaration of Helsinki* (2013).
[23] Sidaway v. Board of Governors of the Bethlem Royal Hospital, [1985] AC 871.
[24] H.M. Seervai, *Constitutional Law of India* (Universal Law Publishing, 4th ed., 2015).
[25] Kusum Sharma v. Batra Hospital & Medical Research Centre, (2010) 3 SCC 480.

The duty to disclose also has ethical importance because transparency and honesty are essential elements of medical professionalism. Effective communication regarding risks helps patients and families prepare psychologically and financially for possible outcomes. Proper counselling, detailed documentation of discussions, and written consent forms are crucial safeguards against future disputes and allegations of negligence.[26] Therefore, the legal obligation to disclose risks and dangers serves both as a protection of patient rights and as an important mechanism for ensuring accountability and ethical conduct in healthcare practice.

Non-Disclosure of Dangers as Medical Negligence

If doctors fail to disclose serious risks and complications, courts may hold them liable for: medical negligence, deficiency in service, professional misconduct, or violation of patient rights.

In Mrs. Surjeet Sodhi v. Fortis Hospital, the Commission emphasized that doctors must disclose major risks and possible adverse consequences associated with treatment.

Non-disclosure becomes particularly serious when: complications actually occur; the patient suffers permanent injury; and the patient claims they would have refused treatment if properly informed.

Circumstances Amounting to Negligence

1. Failure to explain serious complications;
2. Conducting unauthorized procedures;
3. Obtaining vague or blanket consent;
4. Concealing surgical risks;
5. Failure to communicate prognosis;
6. Lack of proper documentation.

III. Blanket Consent and Its Legal Problems

Hospitals often obtain generalized consent forms during admission. These forms usually authorize doctors to perform "necessary treatment." Courts have repeatedly held that such blanket consent does not permit unrestricted medical intervention.[27]

[26] World Medical Association, *Declaration of Lisbon on the Rights of the Patient* (1981, revised 2015).
[27] R. v. Brown, [1994] 1 AC 212.

Problems with Blanket Consent

1. **Lack of Specificity:** The patient may not know which procedure is being authorized.
2. **No Real Understanding:** Patients or relatives may sign forms without understanding risks.
3. **Possibility of Abuse:** Doctors may exceed the scope of authorized treatment.
4. **Violation of Patient Rights:** Blanket consent undermines informed decision-making. Indian courts therefore insist that consent should be: procedure-specific, informed, voluntary, and documented properly.[28]

IV. Judicial Approach in India

The Indian judiciary has consistently protected the principle of informed consent as an integral part of the right to life and personal liberty under Article 21 of the Constitution. In critical care situations, courts have recognized that obtaining direct consent from a patient may become impossible where the patient is unconscious, ventilated, or otherwise incapacitated. In such circumstances, family authorization has been judicially accepted as a practical and lawful substitute, particularly where immediate medical intervention is necessary to save life. However, courts have simultaneously imposed a duty upon doctors and hospitals to disclose material risks, possible complications, and dangers associated with treatment whenever circumstances permit such disclosure.[29]

The Supreme Court in M.R. Prabha v. Dr. A. K. V. Bhagat emphasized that consent for treatment must be real, informed, and based upon adequate disclosure. The Commission observed that patients and attendants must be informed of foreseeable complications and probable consequences before undertaking major procedures, except in situations of immediate emergency where delay may threaten life.[30]

Indian courts have also accepted the doctrine of necessity in emergency medicine. In Pt. Parmanand Katara v. Union of India, the Supreme Court ruled that preservation of human life is of paramount importance and that no procedural formalities should obstruct emergency medical treatment. The judgment recognized that doctors may proceed without formal consent when urgent intervention is indispensable to save the patient's life.[31]

[28] C.M. Francis v. Kerala State Electricity Board, AIR 2007 Ker 161.
[29] Constitution of India, art. 21.
[30] M.R. Prabha v. Dr. A. K. V. Bhagat, I (2002) CPJ 9 (NC).
[31] Pt. Parmanand Katara v. Union of India, AIR 1989 SC 2039.

The judiciary has further stressed that non-disclosure of serious risks may constitute medical negligence. In Spring Meadows Hospital v. Harjol Ahluwalia, the Supreme Court held hospitals accountable for negligence arising from deficient medical care and inadequate professional conduct. The case reinforced the principle that hospitals owe a duty of care not only in treatment but also in communication and disclosure to patients and their families.[32]

The Supreme Court in Aruna Ramachandra Shanbaug v. Union of India recognized the significance of informed decision-making in end-of-life care and discussed the role of relatives, medical experts, and judicial oversight in decisions involving withdrawal of life support. The judgment strengthened the principle that patient dignity and autonomy continue even in critical and irreversible medical conditions.[33]

Further, the Mental Healthcare Act, 2017 introduced statutory recognition of informed consent and advance directives in medical treatment. The legislation reflects the evolving legal position that patient autonomy, informed decision-making, and participation of nominated representatives are essential elements of healthcare governance in India.[34]

Indian courts have therefore developed a balanced judicial approach. While doctors are legally protected when acting promptly in genuine emergencies to preserve life, hospitals and medical professionals may still incur liability if they fail to communicate substantial risks, conceal dangers, or rely upon vague blanket consent forms. The judiciary thus attempts to harmonize emergency medical necessity with the constitutional values of autonomy, dignity, and bodily integrity.[35]

V. Suggestions and Reforms

1. **Standardized ICU Consent Forms:** Hospitals should use detailed and procedure-specific consent documents.
2. **Better Communication Training:** Doctors should receive training in counselling patients and families.
3. **Audio-Visual Recording:** High-risk consent discussions may be audio-video recorded for transparency.
4. **Simplified Language:** Medical terminology should be explained in simple language understandable to ordinary people.

[32] Spring Meadows Hospital v. Harjol Ahluwalia, (1998) 4 SCC 39.
[33] Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454.
[34] Mental Healthcare Act, 2017, ss. 4–11.
[35] Law Commission of India, 241st Report on Passive Euthanasia (2012).

5. **Continuous Family Counselling:** Critical care teams should provide regular updates to families regarding risks and prognosis.
6. **Legal Guidelines for Surrogate Consent:** India needs comprehensive legislation specifically regulating surrogate medical decision-making.
7. **Ethical Committees:** Hospitals should establish ethics committees for difficult ICU decisions.

VI. Conclusion

Critical care informed consent represents a complex interaction between medical urgency and patient rights. Indian law permits doctors to provide emergency treatment without formal consent where delay threatens life. In such situations, family authorization and implied consent become legally acceptable mechanisms for protecting the patient's best interests.

However, the duty to disclose material risks continues even in emergency situations whenever communication is reasonably possible. Courts have repeatedly emphasized that blanket consent and unauthorized procedures violate patient autonomy and may amount to medical negligence.

The evolving jurisprudence of Indian courts demonstrates a clear movement toward greater accountability, transparency, and respect for patient dignity in critical care medicine. Proper communication, documented consent, and ethical medical practice remain essential for balancing life-saving treatment with individual rights.